

REMARKS

In view of the above amendments and the following remarks, reconsideration and further examination are respectfully requested.

Status of all of the Claims

Below is the status of the claims in this Application.

1. Claims pending: 22-42.
 - a. Claims withdrawn from consideration but not canceled: None.
 - b. Claims added: 22-42.
2. Claims canceled without prejudice: 1-21.

It is believed that the above-identified claims are supported by the application as originally filed.

Claim Objections

In Item 1 of the Office Action, claims 4-21 were objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. In response, Applicants firstly note that they intended that a different set of claims be examined, namely, a set of claims submitted with their original application submission. Therefore, Applicants have submitted with this Response a new set of claims 22-42 which track closely with the claims Applicants originally wished to be examined. Although claims 1-3 were not objected to, Applicants have canceled them and submitted new claims to put the subject matter being claimed therein in better form for U.S. patent practice. Applicants respectfully request the withdrawal of the objection since all multiple dependent claims have been canceled from the application without prejudice.

Claim Rejections

Rejection of Claims 1-3 Under 35 USC 102(b)

In the Office Action, claims 1-3 were rejected under 35 USC 102(b) as being anticipated by Markart (US Patent 6,441,898). As noted above, claims 1-3 have been canceled without prejudice and Applicants have submitted new claims 22-24 which generally track the subject matter of claims 1-3. It is believed that claims 22-24 are allowable over the Markart patent. Further, the remainder of the newly submitted claims (claims 25-42) are also believed to patentably define over the Markart patent.

Markart discloses a test strip for the optical determination of an analyte, e.g., blood sugar, where a thin-layered reagent-containing medium 34 is applied onto a carrier 26 made of an optically transparent material (see column 1, lines 40-45). A reaction field is limited by diaphragm strips 30. To achieve a uniform distribution of even a very small liquid drop over the whole reaction field, the reaction field can be covered by a hydrophilic material. For example, a finely woven textile 36 absorbing very little liquid can be used for this purpose. To protect the reaction field, the surface area of the test strip containing the reaction field may be provided with a hydrophobic surface having a drop application opening 40. Cover 38 can be a plastic foil. A drop of blood can be applied in the region of the drop application opening at the end of the strip. Because of the hydrophilic material, the fluid to be investigated is then transported from the drop application opening to the area of the reaction field to be detected by the measuring optic system (see column 2, lines 54 to 65).

In the Office Action, the Office has read the inert carrier of Applicants' claim on the web 26 of Markart, the application zone on the hydrophilic net 36, the channel on the hydrophilic material between the drop application opening and the area detected by the measuring optic system, and the hydrophobic structured surface on the outer surface 38.

In response, Applicants note that Markart's outer surface 38 may be hydrophobic, but Markart does not teach outer surface 38 as comprising a hydrophobic structured

surface in an area around the application zone. This limitation of Applicants' claim 22 is completely missing from the Markart reference. The hydrophobic structured surface as called for by Applicants' claim 22 is discussed in detail in Applicants' specification paragraphs 19-22 (the first four paragraphs of Applicants' Detailed Description of the Drawings), and the advantages of such a structured surface are set forth therein.

For at least the reasons noted above, Markart clearly does not anticipate Applicants' claimed analytical test element as set forth in claim 22. Applicants' dependent claims 23 and 24 include all of the limitations of claim 22, and are thus believed to patentably define over the Markart reference. New claims 25-42 are also believed to patentably define over the Markart reference.

Claims 1-3 were also rejected under 35 USC 102(b) as being anticipated by Matzinger (CA 2095982). It is believed that new claims 22-24 are allowable over the Matzinger patent. Further, the remainder of the newly submitted claims (claims 25-42) are also believed to patentably define over the Matzinger patent.

Matzinger discloses a reagent strip for measuring analytes in a sample. The test strip comprises a "testing pad" attached below a plastic strip having a window. The pad includes an anisotropic membrane 132 having relatively small pores on one side and relatively larger pores on the other side (see reference numbers 136 and 142 in Fig. 2). A discontinuous adhesive layer 150 can be used to secure the membrane 132 to a transport medium 146. The transport medium 146 has large pores. According to Matzinger, the test strip is defined such that the sample (blood) is applied to the external surface of the transport medium 146 (see page 8, lines 12 to 15). The outer surface of the transport medium 146 onto which the liquid sample is applied, is generally hydrophilic to guarantee absorption of the sample.

In the Office Action, the rejection seems to be based on reading Applicants' inert carrier onto Matzinger's membrane-side having small pores, the application zone on the membrane side having larger pores, the channel for transporting liquid on the transport medium and the hydrophobic structured surface on the hydrophobic polymer coating 120.

However, Applicants would like to point out that the application zone of Matzinger actually corresponds to the transport medium 148 (see page 3, lines 4 to 8) and the reaction zone corresponds to the side of the membrane 132 including the reaction medium and having relatively smaller pores. It seems to be an open question whether the porous structure of the transport medium would actually include channels or gaps for transporting liquids from the application zone to the reaction zone through the porous reaction medium since Matzinger does not disclose that there is a hydrophobic structured surface around the application zone.

According to the teachings of Matzinger, the application zone corresponds to the transport medium 146 on the lower side of the test strip depicted in Fig. 2. A sample is applied to the transport medium 146. In this area, there is neither a hydrophobic, nor a structured hydrophobic surface as called for by Applicants' claim 22. Accordingly, Applicants believe that claim 22 is not anticipated by the Matzinger reference. Claims 23 and 24 include all of the limitations of claim 22 and are thus, also believed to be patentable over the Matzinger reference. Further, the remainder of the new claims (claims 25-42) are also believed to patentably define over the Matzinger reference.


Conclusion

It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede the basis for the rejections in the Office Action, but are simply provided to overcome the rejections made in the Office Action in the most expedient fashion. In view of the above amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and an early notice of allowance is earnestly solicited.

If after reviewing this response the Examiner feels that any issues remain which must be resolved before the Application can be passed to issue, the Examiner is invited to contact the undersigned representative by telephone to resolve such issues.

Respectfully submitted,

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